IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

M/s Aditya Cement **VS**. C.C.E., Jaipur.

D.B. OTHER TAX REFERENCE NO.46/2003

Date of order : 9th March, 2006

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE R.P. VYAS

Mr. Rajendra Mehta for the petitioner.
Mr. V.K. Mathur for the respondent.

BY THE COURT:- (Per Hon'ble Mr. Rajesh Balia, J.)

Learned counsel for the parties state that since the questions raised in this reference under Section 35 of the Central Excise Act, 1944 are governed by the two subsequent decisions of the Supreme Court and no further arguments are to be raised, the preparation of paper book be dispensed with and reference may be answered in terms of the Supreme Court decision.

In view of the aforesaid, the preparation of

paper book is dispensed with. The three questions which were directed by this Court vide order dated 7.7.2003 to be referred to this Court for its decision arising out of the order of the Central Excise and Gold Control Appellate Tribunal, New Delhi dated 18.6.2002 are as under:-

> "1. Whether in the facts and circumstances of the present case, the precincts of the plant area, where the crusher and conveyor belt are installed, can be called as a factory within the meaning of Section 2(e) of the Act?
>
> 2. Whether the mining area and the area covered under the crusher and the conveyor belt reaching plant falls within the premises/ precincts of the factory as defined in Sec.2(e) of the Act?
>
> 3. Whether capital goods used in the precincts of the factory area for obtaining crushed limestone and transporting crushed limestone into raw mill which is then used in the plant for the manufacture of cement can be considered as eligible for Modvat credit in terms of Rule 57Q of the Central Excise Rules, 1944?

The facts of the case are that the goods in question whether as inputs or as capital goods were used by the assessee at the site of captive mines whose raw material are exclusively to be used for manufacture of cement by the assessee-applicant. The Tribunal has disallowed the claim of the assessee to avail modvat credit on the inputs detailed in the order from April 1999 to June 1999 on the ground that

since mines were not part of factory, the inputs and the capital goods were not used in the factory for producing, processing or manufacturing any goods. The Tribunal following the decision in Jaypee Rewa Cement Vs. CCE – **2001 (133) ELT 3 (SC)** had allowed the availing of modvat credit on inputs namely the explosives and lubricants used in crusher and conveyer belts at mines whereas the duty paid on capital goods at captive mines was disallowed.

The Supreme Court in its decision in J.K. Udaipur Udyog Ltd.'s case **2004 (7) SCC 344** had distinguished the decision in Jaypee Rewa Cement's case and had disallowed the modvat credit in respect of inputs and capital goods used at captive mines.

However, by later decision on reference being made in M/s Vikram Cement in **2006 (2) SCC 351**, it was held that the view taken in J.K. Udaipur Udyog Ltd's case about dis-allowability of modvat credit on duty paid on inputs and capital goods at captive mines in J.K. Udaipur Udyog's case was erroneous and in that case the inputs used at mine site were held eligible for availing modvat credit in respect of duties paid on such inputs.

By another decision in Birla Corporation's

case **2005 186 ELT 266** it was held that conveyor belt through which raw material excavated from mines is transported to factory site is a part of factory and such conveyor belts and crushers are eligible for availing modvat credit on the duties paid on such capital goods.

By a later decision in Civil Appeal No.119/2005, M/s Vikram Cement Vs. Commissioner of Central Excise-I and other connected appeals decided on 16th Feb., 2006, the Supreme Court held that modvat credit in respect of capital goods used at captive mines will be available to the assessee. It was stated that the question of allowability of modvat credit on duties paid on capital goods used at captive mines is also governed by the ratio laid down in the earlier Vikram Cement's case **2006 (194) ELT 3**, and the Court said that:-

> As regards the Modvat/Cenvat Credit on capital goods, if the mines are captive mines so that they constitute one integrated unit together with the concerned cement factory, Modvat/Cenvat credit on capital goods will be available to the assessee. On the other hand, if the mines are not captive mines but they supply to various other cement companies of different assessees, Modvat/Cenvat credit on capital

> goods used in such mines will not be available to the concerned assessee under the appropriate Modvat/Cenvat Rules. The matters are remanded to the respective original authorities for decision only on the above issue."

Since in this case, it is not in dispute that the capital goods were used at captive mines only, the availability of modvat credit on duties paid on such capital goods and inputs is squarely governed by the aforesaid decisions in Vikram Cement's cases.

Consequently, the questions framed above are answered in favour of the assessee and against the revenue by holding that the assessee is entitled to avail the modvat credit in respect of capital goods and inputs used at captive mines, raw material excavated from which is used exclusively by the assessee for its own use and is not sold to other parties.

No costs.

[R.P. VYAS], J. [RAJESH BALIA], J.

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